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2 WATER RIGHTS COMPACT
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4

5 STATE OF MONTANA
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7 UNITED STATES OF AMERICA, DEPARTMENT OF AGRICULTURE,
8 Agricultural Research Service,
9 Sheep Experiment Station
10

11 This Compact is entered into by the State of Montana (“State”) and the United States of
12 America (“United States”) to settle for all time any and all claims existing on the effective date of
13 the Compact to reserved water rights in the State of Montana for the United States Sheep
14 Experiment Station (“U.S. Sheep Experiment Station”) administered by the United States
15 Department of Agriculture, Agricultural Research Service.
16

17 RECITALS
18

19 WHEREAS, the State of Montana, in 1979, pursuant to Title 85, chapter 2 of the Montana Code
20 Annotated, commenced a general adjudication of the rights to the use of water within the State of
21 Montana, including all federal reserved and appropriative water rights;
22

23 WHEREAS, 85-2-703, MCA, provides that the State may negotiate compacts concerning the
24 equitable division and apportionment of water between the State and its people and the federal
25 government with claims to non-Indian reserved water rights within the State of Montana;
26

27 WHEREAS, the United States wishes to quantify and have decreed the amount of water
28 necessary to fulfill the purposes of the reservation of lands for the U.S. Sheep Experiment
29 Station in the State of Montana;
30

31 WHEREAS, the United States Attorney General, or a duly designated official of the United
32 States Department of Justice, has authority to execute this Compact on behalf of the United
33 States pursuant to the authority to settle litigation contained in 28 U.S.C. §§ 516 and 517;
34

35 WHEREAS, the Secretary of the Agriculture, or a duly designated official of the United States
36 Department of the Agriculture, has authority to execute this Compact on behalf of the United
37 States Department of Agriculture pursuant to _____ ;
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39 NOW THEREFORE, the State of Montana and the United States agree as follows:
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41 ARTICLE I
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DEFINITIONS

For purposes of this Compact only, the following definitions shall apply:

- (1) "Abstracts" mean the copy of the document entitled "Abstracts of U.S. Sheep Experiment Station Water Rights" referenced in this Compact as Appendix 3.
- (2) "Consumptive" means a use of water which removes water from the source of supply such that the quality or quantity is reduced or the timing of return delayed, making it unusable or unavailable for use by others, and includes evaporative loss from impoundments or natural lakes.
- (3) "Department" means the Montana Department of Natural Resources and Conservation or its successor.
- (4) "Effective date of this Compact" means the date of the ratification of the Compact by the Montana legislature, written approval by the United States Department of the Agriculture, or written approval by the United States Department of Justice, whichever is latest.
- (5) "Groundwater" means water that is beneath the ground surface.
- (6) "Parties" means the State of Montana and the United States.
- (7) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, or any other entity, but does not include the United States.
- (8) "U.S. Sheep Experiment Station" means those lands within Montana that were withdrawn and reserved by Executive Order No. 3767, dated December 10, 1922, as depicted on the map attached as Appendix 1 to this Compact. For purposes of this Compact, it does not include portions of the U.S. Sheep Experiment Station located in the State of Idaho that the United States owns and the U.S. Department of Agriculture, Agricultural Research Service, administers.
- (9) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, "State" means the Director of the Montana Department of Natural Resources and Conservation or the Director's designee.
- (10) "United States" means the federal government and all officers, agencies, departments and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, "United States" means the Secretary of the Department of Agriculture, or the Secretary's designee.

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3 ARTICLE II

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5 WATER RIGHT

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7 The parties agree that the following water rights are in settlement of all of the United States'
8 federal reserved water rights for the U.S. Sheep Experiment Station.
9

10 A. Purpose of Reservation for the U.S. Sheep Experiment Station.

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12 The U.S. Sheep Experiment Station was created for agricultural experiment purposes and the
13 land in Montana was set aside by Executive Order No. 3767, dated December 10, 1922.

14 B. Quantification.

15
16 Subject to the terms of Article III, the United States has federal reserved water rights from
17 sources located on the U.S. Sheep Experiment Station as described below.
18

19 1. Current Stockwater Use.

20
21 The U.S. Sheep Experiment Station has federal reserved rights for consumptive use for
22 stockwatering purposes at the 51 locations identified in the table attached as Appendix 2
23 for the volume of water identified. Abstracts for each of these federal reserved water
24 rights are attached as Appendix 3 to this Compact. The period of use of the United
25 States' water rights for consumptive use set forth in Article II. B.1. shall be from May 1
26 through October 31 of each year.
27

28 2. Future Uses.

29
30 In addition to the current stockwater uses identified above, the United States has a federal
31 reserved water right to develop additional stockwater, domestic, irrigation, storage, dust
32 abatement, reclamation or other uses of surface water or groundwater to fulfill the
33 purposes of the U.S. Experiment Station up to a total additional volume of 15 acre feet
34 per year for uses within the U.S. Sheep Experiment Station.
35

36 3. Emergency Fire Suppression.

37
38 The use of water for emergency fire suppression benefits the public, and is necessary for
39 the purposes of the U.S. Sheep Experiment Station. The United States has a federal
40 reserved water right to divert or withdraw water for fire suppression at the U.S. Sheep
41 Experiment Station as needed and without a definition of the specific elements of a
42 recordable water right. Use of water for fire suppression shall not be considered an

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1 exercise of the United States' water rights for current or future uses described in this
2 Article II, section B. 1. and 2.

3
4 4. Priority Date.

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6 The priority date for all federal reserved water rights for the U.S. Sheep Experiment
7 Station is December 10, 1922.

8
9 4. Purposes.

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11 The United States' reserved water rights for the U.S. Sheep Experiment Station shall be
12 used for purposes as described in this Article II, section A. The types of use may include,
13 but are not limited to: stockwater, domestic, irrigation, storage, dust abatement, and
14 reclamation.

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17 ARTICLE III
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19 IMPLEMENTATION

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21 A. Abstracts.

22
23 Abstracts for all the United States' federal reserved water rights for current stockwater uses are
24 set forth in Appendix 3. The parties prepared the Abstracts to comply with the requirements for
25 a final decree as set forth in 85-2-234, MCA, and in an effort to assist the state courts in the
26 process of entering decrees accurately and comprehensively reflecting the rights described in this
27 Compact. The rights specified in the Abstracts are subject to the terms of this Compact.

28
29 B. Enforcement and Administration of Water Right.

30
31 1. The United States, the State, or a holder of a water right recognized under state law,
32 may petition a state or federal court of competent jurisdiction for relief when a
33 controversy arises between the United States' reserved water rights described by this
34 Compact, and a holder of a water right recognized under state law. Resolution of the
35 controversy shall be governed by the terms of this Compact where applicable or, to the
36 extent not applicable, by appropriate state or federal law.

37
38 2. For purposes of the administration of federal reserved water rights provided for in
39 Article II, the United States agrees that a water commissioner, or other official appointed
40 by a court of competent jurisdiction, may enter the U.S. Sheep Experimental Station to
41 collect data, inspect structures for the diversion and measurement of water, and distribute
42 the federal reserved water rights in Article II. The terms of entry or distribution may be

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1 limited, as appropriate, by an order of a court of competent jurisdiction. Nothing herein
2 waives the right of the United States, with respect to a specific action or anticipated
3 action by a water commissioner or other official under this subsection, to seek terms of
4 entry or distribution consistent with federal law if in conflict with state law.
5

6 3. The Department may enter the U.S. Sheep Experimental Station lands upon which a
7 federal reserved water right is described in Article II for the purposes of data collection
8 on U.S. Sheep Experimental Station water diversions or water uses. The Department
9 shall notify the United States by certified mail or in person at least 72 hours prior to
10 entry.
11

12 C. Use of Reserved Water Rights.

13

14 The reserved rights of the United States described in this agreement are federal water rights.
15 Non-use of all or a part of the federal water rights described in this Compact shall not constitute
16 abandonment or forfeiture of those rights. The federal water rights described in this Compact
17 need not be applied to a use deemed beneficial under state law, but shall be restricted to uses
18 necessary to fulfill the purposes of the U.S. Sheep Experiment Station.
19

20 D. Change in Use.

21

22 1. The United States may make a change in the use of its reserved water rights described
23 in Article II, section B. 1. and 2., provided that:

24
25 (a) the use must fulfill the purposes of the U.S. Sheep Experiment Station
26 described in Article II. Section A;

27
28 (b) the total use shall not exceed the amount described in this Compact; and
29

30 (c) the change shall not adversely affect a senior water right recognized under
31 state law.
32

33 2. The United States' federal reserved water right to divert or withdraw water for
34 Emergency Fire Suppression as described in Article II, section B.3., shall not be changed
35 to any other use.
36

37 E. Reporting Requirements.

38

39 The United States shall provide a report to the Department on an annual basis, or on a periodic
40 basis agreed to by the Parties, containing specific information on:

41
42 1. the development of new uses as described in Article II, section B.2;

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1
2 2. changes in use as described in this Article III, section D; and
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5 3. the source of supply, the dates of use, and the estimated amount of water used for
6 Emergency Fire Suppression as described in Article II, section B.3.
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9 ARTICLE IV

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11 GENERAL PROVISIONS

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13 A. No Effect on Tribal Rights or Other Federal Reserved Water Rights.
14

15 1. The relationship between the water rights of the United States described herein and any
16 rights to water of an Indian Tribe, or of any federally derived water right of an individual,
17 or of the United States on behalf of such tribe or individual shall be determined by the rule
18 of priority.
19

20 2. Nothing in this Compact may be construed or interpreted in any manner to establish
21 the nature, extent or manner of administration of the rights to water of any other federal
22 agency or federal lands in Montana other than those of the U.S. Sheep Experiment
23 Station.
24

25 3. Nothing in this Compact may be construed or interpreted in any manner to establish
26 the nature, extent or manner of administration of the rights to water of any Indian Tribes
27 and tribal members.
28

29 4. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or
30 claim of any Indian Tribe regarding boundaries or property interests.
31

32 B. General Disclaimers.
33

34 Nothing in this Compact may be construed or interpreted:
35

36 1. as a precedent for the litigation of reserved water rights or the interpretation or
37 administration of future compacts between the United States and the State; or of the
38 United States and any other state;
39

40 2. as a waiver by the United States on behalf of the Agricultural Research Service of its
41 right under state law to raise objections in state court to individual water rights claimed
42 pursuant to the state Water Use Act, Title 85, of the Montana Code Annotated, in the

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1 basins affected by this Compact; or any right to raise objections in an appropriate forum
2 to individual water rights subject to a provisional permit under the state Water Use Act,
3 Title 85, of the Montana Code Annotated, in the basins affected by this Compact;
4

5 3. as a waiver by the United States of its right to seek relief from a conflicting water use;
6

7 4. to establish a precedent for other agreements between the State and the United States
8 or an Indian tribe;
9

10 5. to determine the relative rights, inter sese, of persons using water under the authority
11 of state law or to limit the rights of the Parties or a Person to litigate an issue not resolved
12 by this Compact;
13

14 6. to create or deny substantive rights through headings or captions used in this Compact;
15

16 7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal
17 law as of the effective date of this Compact;
18

19 8. to limit the authority of the United States to manage its lands in accordance with the
20 Constitution, statutes, and regulations of the United States;
21

22 9. to affect in any manner the entitlement to or quantification of other federal water
23 rights;
24

25 10. to be binding on the United States with regard to the water rights of the United States
26 for any area other than the U.S. Sheep Experiment Station;
27

28 11. to affect the water rights of any other federal agency that is not a successor in interest
29 to the water rights subject to this Compact;
30

31 12. to prevent the United States from seeking a permit to appropriate water under state
32 law for use within or outside the U.S. Sheep Experiment Station boundaries.
33

34 C. Reservation of Rights.
35

36 The parties expressly reserve all rights not granted, described or relinquished in this Compact.
37

38 D. Severability.
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40 The provisions of this Compact are not severable.
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42 E. Multiple Originals.

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2 This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original
3 signatures shall be deemed an original.
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5 F. Notice.
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7 Unless otherwise specifically provided for in this Compact, service of notice required hereunder,
8 except service in litigation, shall be:
9

10 1. State: Upon the Director of the Department and such other officials as the Director
11 may designate in writing.
12

13 2. United States: Upon the Secretary of Agriculture, the U.S. Sheep Experiment Station
14 Director, and such other officials as the Secretary may designate in writing.
15

16 ARTICLE V
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18 FINALITY OF COMPACT
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20 A. Binding Effect.
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22 1. The effective date of this Compact is the date of the ratification of this Compact by the
23 Montana legislature, written approval by the United States Department of Agriculture, or
24 written approval by the United States Department of Justice, whichever occurs later.
25 Once effective, all of the provisions of this Compact shall be binding on the parties.
26

27 2. Following the effective date, this Compact shall not be modified without the consent
28 of both parties. Either party may seek enforcement of this Compact in a court of
29 competent jurisdiction.
30

31 3. On approval of this Compact by a state or federal court of competent jurisdiction and
32 entry of a decree by such court confirming the rights described herein, this Compact and
33 such rights are binding on all persons bound by the final order of the court.
34

35 4. If an objection to this Compact is sustained pursuant to 85-2-703 and -702(3), MCA,
36 this Compact shall be voidable by action of and without prejudice to either party.
37

38 B. Filing Compact with State Court.
39

40 1. Subject to the following stipulations and within one hundred eighty (180) days of the
41 effective date of this Compact, the parties shall submit this Compact to an appropriate
42 state court or courts having jurisdiction over this matter in an action commenced pursuant

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1 to 43 U.S.C. § 666, for approval in accordance with state law and for the incorporation of
2 the water rights described in this Compact into a decree or decrees entered therein. The
3 parties understand and agree that the submission of this Compact to a state court or
4 courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-
5 702(3), MCA, and does not expand the jurisdiction of the state court or expand in any
6 manner the waiver of sovereign immunity of the United States in the McCarran
7 Amendment, 43 U.S.C. § 666, or other provision of federal law.
8

9 C. Dismissal of Filed Claims.
10

11 At the time the state courts approve the water rights described in this Compact and enter a decree
12 or decrees confirming the rights described herein, such courts shall dismiss, with prejudice, all
13 water right claims specified in Appendix 4 of this Compact for the U.S. Sheep Experiment
14 Station. If this Compact is not approved or a water right described herein is not confirmed, these
15 claims shall not be dismissed.
16

17 D. Settlement of Claims.
18

19 The parties intend that the water rights described in this Compact are in full and final settlement
20 of the federal reserved water right claims for the U.S. Sheep Experiment Station land in Montana
21 described in this Compact and administered by the Agricultural Research Service on the
22 effective date of this Compact. On the effective date of this Compact, the United States hereby
23 and in full settlement of any and all claims to federal reserved water rights by the United States,
24 including all claims that the Agricultural Research Service filed as part of the ongoing statewide
25 adjudication process, relinquishes forever all claims to federal reserved water rights within the
26 State of Montana for the U.S. Sheep Experiment Station. The State agrees to recognize the water
27 rights described and quantified herein, and shall, except as expressly provided for herein, treat
28 them in the same manner as a water right under Montana state law. Nothing in this Compact
29 precludes the Agricultural Research Service from filing for future water use permits under
30 Montana state law.
31

32 E. Defense of Compact.
33

34 The parties agree to defend the provisions and purposes of this Compact from all challenges and
35 attacks.
36
37

38 IN WITNESS WHEREOF the representatives of the State of Montana and the United States
39 have signed this Compact on the ____ day of _____, 2007.
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